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REBECCA REUTTER, individually
and as Trustee of the KIRK REUTTER FAMILY TRUST

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REBECCA REUTTER, individually and
as Trustee of the KIRK REUTTER
FAMILY TRUST,

Plaintiff,

vs.

HARTFORD LIFE INSURANCE
COMPANY; OMNICARE, INC.; and
CVSHEALTH,

Defendants.

CASE NO:

COMPLAINT FOR DAMAGES:

**FOR ERISA PLAN BENEFITS; OR
IN THE ALTERNATIVE, FOR
EQUITABLE RELIEF RESULTING
FROM BREACH OF FIDUCIARY
DUTY; AND
FOR PRE-JUDGMENT AND POST-
JUDGMENT INTEREST,
ATTORNEYS' FEES AND COSTS**

PRELIMINARY ALLEGATIONS

1. “Jurisdiction” – This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter “ERISA”) as it involves a claim by Plaintiff for breach of fiduciary duty under employee benefit plans regulated and governed under ERISA. Jurisdiction is predicated under these code sections as well as 28 U.S.C. § 1331 as this action involves a federal question. This action is brought for the purpose of obtaining equitable relief, including equitable surcharge, under 29 U.S.C.

1 § 1132(a). Plaintiff also seeks pre-judgment interest, post-judgment interest,
2 attorneys' fees and costs.

3 2. Plaintiff, Rebecca Reutter is the sister of Kirk Reutter, now deceased.
4 Kirk Reutter was formerly an employee of Omnicare, Inc. which, while he was
5 employed, was acquired by CVSHealth. Before he passed, Mr. Reutter named his
6 sister Rebecca as the successor Trustee of his Kirk Reutter Family Trust (the
7 "Reutter Trust"), and the beneficiary of 50% of all assets of his estate, (with the
8 remaining 50% to be disbursed to his other sister.) He also appointed Ms. Reutter
9 as his true and lawful attorney-in-fact by way of a durable power of attorney,
10 executed on July 17, 2017; and as a beneficiary of his group life insurance
11 coverage (basic and voluntary) issued to him by The Hartford Life Insurance
12 Company (Hartford) while he was employed with Omnicare, Inc. To the extent of
13 any designation of the Reutter Trust as a beneficiary of said life insurance benefits,
14 or defect in the beneficiary designation, the Reutter Trust has an interest in the life
15 insurance benefits or the damages related thereto as alleged herein.

16 3. Plaintiff is informed and believes that Defendant Hartford is a
17 corporation with its principal place of business in the State of Connecticut,
18 authorized to transact and transacting business in the Central District of California,
19 and can be found in the Central District of California. Plaintiff is informed and
20 believes that her brother's employer, Omnicare, Inc., maintained a welfare benefit
21 plan providing life insurance benefits funded in whole or in part with an insurance
22 policy from Hartford (the "Omnicare Plan"). Hartford administered the claim
23 which is the subject of this dispute, interpreted Plan terms, and issued a claim
24 denial, all while operating under a conflict of interest; and the bias this created
25 adversely affected the claims determination. Hartford, as the Plan Administrator,
26 is an ERISA fiduciary with respect to the Plan, the Plan's participants, and the
27 Plan's beneficiaries. Hartford maintains offices and thus resides in this judicial
28 district.

1 4. Plaintiff is informed and believes that Defendant Omnicare, Inc. is a
2 corporation with its principal place of business in Los Angeles, California,
3 authorized to transact and transacting business in the Central District of California,
4 and can be found in the Central District of California, and is the sponsor of the
5 Omnicare Plan. The Omnicare Plan purchased group life insurance coverage from
6 Hartford. The Omnicare Plan under which Mr. Reutter is and was a participant,
7 and pursuant to which Plaintiff is and was entitled to life insurance benefits
8 covering Mr. Reutter's life, is regulated by ERISA. Omnicare, Inc., as the Plan
9 Sponsor and Plan Administrator, is an ERISA fiduciary with respect to the Plan,
10 the Plan's participants, and the Plan's beneficiaries.

11 5. Plaintiff is informed and believes that Defendant CVSHealth is a
12 corporation with its principal place of business in the State of Rhode Island, and is
13 authorized to transact and transacting business in the Central District of California
14 and can be found in the Central District of California. Plaintiff is further informed
15 and believes that in or around 2016 CVSHealth acquired Omnicare, Inc., or some
16 part of OmniCare, Inc., and in the process assumed some or all responsibility for
17 Omnicare, Inc. corporate obligations. CVSHealth as the successor Plan Sponsor
18 and Plan Administrator, is an ERISA fiduciary with respect to the Omnicare Plan,
19 the Plan's participants, and the Plan's beneficiaries.

20 6. While employed by Omnicare, Inc., Kirk Reutter was duly enrolled
21 for \$10,000 in Basic Life coverage and \$100,000 in Voluntary Life coverage under
22 the Omnicare Plan. Hartford identified Kirk Reutter with I.D. number 9004243253
23 with respect to the group life insurance coverage it provided to Omnicare, Inc.
24 employees under the Plan. Plaintiff is informed and believes that Omnicare, Inc.
25 and Hartford intended that the subject life insurance would result in coverage being
26 provided to residents of the State of California. Plaintiff is informed and believes
27 that the life insurance policy(ies) funding the Plan were issued, renewed or
28 amended on or after January 1, 2012.

1 7. Defendants can be found in this judicial district and the Omnicare
2 Plan was administered in this judicial district. Thus, venue is proper in this judicial
3 district pursuant to 29 U.S.C. § 1132(e)(2).

4 8. Mr. Reutter became disabled, left work in 2016, and was approved for
5 Short Term and Long Term Disability benefits by Hartford. Mr. Reutter never
6 returned to work, and subsequently died on July 20, 2017 from pancreatic cancer.
7 Thereafter, Plaintiff made a claim to Hartford for life insurance benefits under the
8 Omnicare Plan.

9 9. On October 19, 2017, following the claim by Ms. Reutter, Ms. Gina
10 Hickman, on behalf of Hartford, wrote to the Kirk Reutter Family Trust and
11 represented that Mr. Reutter did not have any “Employee Group Life Insurance
12 coverage in force” at the time of his death. Ms. Hickman failed to provide any
13 details about how she arrived at the conclusion about a lack of life insurance
14 coverage for Mr. Reutter.

15 10. Plaintiff has since identified a document which suggests Hartford was
16 in error when it made said representations to the Kirk Reutter Family Trust.
17 Attached as Exhibit A is a 2016 Benefits Enrollment Confirmation showing that
18 for calendar year 2016, Mr. Reutter was covered by \$10,000 in “Basic Life and
19 AD&D” and \$100,000 in “Voluntary Life and AD&D.” The Basic life was
20 provided at no cost to Mr. Reutter; the Voluntary Life was charged at the rate of
21 \$5.54 per pay period. Plaintiff provided a copy of the Benefit Enrollment
22 Confirmation to Defendants to make further inquiry into the extent of life coverage
23 and in an attempt to engage them in further discussion about the benefits, yet
24 Defendants failed to respond to said inquiry in any manner.

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FIRST CAUSE OF ACTION
FOR ERISA BENEFITS, PRE-JUDGEMENT AND POST-JUDGEMENT
INTEREST, AND ATTORNEYS' FEES AND COSTS
(29 U.S.C. § 1132(a)(1)(B))

11. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

12. As a result of the Defendants' conduct and their wrongful denial of benefits due to Plaintiff, Plaintiff has been damaged in the amount of the group life insurance proceeds of approximately \$110,000, the actual amount of which will be proven at trial.

13. Plaintiff is entitled to recover said benefits pursuant to 29 U.S.C. § 1132(a)(1)(B).

14. As a further direct and proximate result of Defendants' conduct, Plaintiff, in pursuing this action, has been required to incur attorneys' fees and costs. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff is entitled to have such fees and costs paid by Defendant(s).

15. Following the denial of benefits under the Plan, Plaintiff exhausted all administrative remedies required under ERISA, or said remedies were deemed exhausted by virtue of the futility of trying to pursue benefits Defendants represented did not exist, and Plaintiff has performed all duties and obligations on Plaintiff's part to be performed under the Omnicare Plan.

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SECOND CLAIM FOR RELIEF
FOR BREACH OF FIDUCIARY DUTY AND EQUITABLE RELIEF
UNDER ERISA 29 U.S.C. § 1132(a) AGAINST DEFENDANTS
OMNICARE, INC. AND CVSHEALTH
(PLEAD IN THE ALTERNATIVE TO THE FIRST CAUSE OF ACTION)

16. Plaintiff pleads this second cause of action as an alternative to the first cause of action and incorporates by reference paragraphs 1-10 as though fully set forth herein.

17. Omnicare, Inc. was the sponsor of the Omnicare Plan, and Hartford was the Plan Administrator for the Plan. Plaintiff is informed and believes Defendant CVSHealth became the successor Plan Sponsor and Plan Administrator of the Omnicare Plan. Respectively, as Plan Sponsor and as Plan Administrator, Defendants, and each of them, owed a fiduciary duty to participants and beneficiaries of the Plan, including Plaintiff.

18. Defendants breached their fiduciary duties under ERISA in that:

a) They inaccurately and unjustifiably represented to Plaintiff that Kirk Reutter was not enrolled for Basic and Voluntary life insurance benefits before his death, and thus failed to pay Basic and Voluntary life insurance benefits to Plaintiff;

b) If their records do reflect Kirk Reutter was not enrolled, Defendants failed or refused to properly enroll Kirk Reutter for the insurance benefits he properly and timely requested;

c) If, for any reason, Kirk Reutter's life insurance benefits were set to expire, Defendants failed or refused to provide Kirk Reutter with notice of his rights to have all premiums waived such that his Basic and Voluntary life insurance would continue upon becoming disabled; and failed to provide him with appropriate forms to complete and submit which would ensure

1 continuation of said benefits;

2 d) If, for any reason, his life insurance benefits were set to expire,
3 Defendants failed or refused to provide Kirk Reutter with notice, opportunity,
4 and appropriate paperwork necessary to port Basic and Voluntary life
5 insurance benefits upon becoming disabled or otherwise becoming qualified
6 for same;

7 e) If, for any reason, his life insurance benefits were set to expire,
8 Defendants failed or refused to provide Kirk Reutter with notice, opportunity,
9 and appropriate paperwork necessary to convert his Basic and Voluntary life
10 insurance benefits upon becoming disabled or otherwise becoming qualified
11 for same;

12 f) After receipt of written request by Plaintiff, Defendants failed or
13 refused to provide Plaintiff with information concerning the life insurance
14 enrollment records for her brother, Kirk Reutter, and with appropriate Plan
15 and other group insurance documents;

16 g) Failed to follow ERISA's mandates regarding communications
17 with Plaintiff concerning the administration of her claim for Basic and
18 Voluntary life insurance benefits; and

19 h) Failed to do all other things necessary and appropriate to
20 properly administer the Omnicare Plan as it pertained to Kirk Reutter and to
21 inform him of his rights and benefits, and to protect those rights and benefits
22 under the Omnicare Plan.

23 19. At all times relevant, Defendants owed Mr. Reutter and his
24 beneficiary, Plaintiff Rebecca Reutter, all of the duties prescribed under ERISA,
25 including without limitation those set forth in 29 U.S.C. § 1104(a). They breached
26 said duties by, among other things, failing to discharge their duties solely in the
27 interest of, and for the purpose of, providing benefits to participants and their
28 beneficiaries, including Plaintiff. Further, they breached said duties by failing to

1 discharge their duties with the care, skill, prudence, and diligence under the
2 circumstances then prevailing that a prudent fiduciary acting in a like capacity and
3 familiar with such matters would use in the conduct of an enterprise of a like
4 character and with like aims.

5 20. As a proximate result of the aforementioned breach of fiduciary duty
6 by Defendants, Plaintiff has damages equivalent to the amount of life insurance
7 benefits she would otherwise have received, in a total sum to be shown at the time
8 of trial.

9 21. Ms. Reutter is entitled to relief pursuant to 29 U.S.C. § 1132(a),
10 including, but not limited to, relief in the form of an instatement of Kirk Reutter
11 into the Omnicare Plan if he was not enrolled due to the error of Defendants,
12 equitable surcharge in the amount of her lost life insurance benefits and/or any
13 other equitable remedy available to redress this harm.

14 22. As a further direct and proximate result of this breach of fiduciary
15 duty, Ms. Reutter, in pursuing this action, has been required to incur attorneys'
16 costs and fees. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff is entitled to have
17 such fees and costs paid by Defendants.

18 23. The wrongful conduct of Defendants has created uncertainty where
19 none should exist, therefore, Plaintiff is entitled to equitable remedies to remove
20 that uncertainty.

21 **REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- 23 1. Payment of life insurance benefits due Plaintiff;
- 24 2. In the alternative to the relief sought in paragraph 1, a declaration
25 requiring Defendants to instate Kirk Reutter into the Plan so as to provide coverage
26 for Basic and Voluntary life insurance; or, to impose an equitable surcharge on
27 Defendants in the amount of Plaintiff's damages;

1 3. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorneys'
2 fees incurred in pursuing this action;

3 4. Payment of pre-judgment and post-judgment interest as allowed for
4 under ERISA; and

5 5. Such other and further legal or equitable relief as this Court deems just
6 and proper.

7
8 DATED: August 27, 2018

KANTOR & KANTOR, LLP

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10 By: /s/ Alan E. Kassan

11 Alan E. Kassan
12 Attorneys for Plaintiff
13 REBECCA REUTTER
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EXHIBIT A

**Omnicare, Inc.**

P.O. Box 27482

Salt Lake City, UT 84127-1067

2016 Benefits Enrollment Confirmation

000349 MED

**KIRK REUTTER**OMNICA
TSUR 0349

This statement confirms your selected 2016 benefit options effective through 12/31/2016. Please review your elections carefully. If your choices are not reflected accurately, please contact the Solution Center at 1-800-422-1554.

Printed: 11/16/2015
 Event: Open enrollment
 Employee ID: [REDACTED]

Your Benefit Elections for 2016

Plan Name	Coverage	Cost/(Credit) Per Pay Period	Effective Date
Medical: Omnicare PPO	Employee Only	\$115.72	01/01/2016
Medical Care Waiver	Not Applicable	\$0.00*	01/01/2016
Dental: Omnicare Dental Plan	Employee Only	\$13.73	01/01/2016
Vision	Waived	\$0.00	01/01/2016
Short Term Disability	Enhanced 60% of pay (up to \$4,000)	\$11.32*	01/01/2016
Long Term Disability	60% of Pay, Monthly Max \$5,000	\$30.19*	01/01/2016
Basic Life and AD&D	\$10,000	No Cost	01/01/2016
Voluntary Life and AD&D	\$100,000	\$5.54*	01/01/2016
Spouse Life	Waive	\$0.00*	01/01/2016
Child Life	Waive	\$0.00*	01/01/2016
HC FSA	Contributing \$2,500	\$96.15	01/01/2016
DC FSA	Not Contributing	\$0.00	01/01/2016
Employee Assistance Program	Employee Assistance Program	No Cost	01/01/2016
Total Per Pay Period Cost – Pre-tax		\$225.60	
* Total Per Pay Period Cost – Post-tax		\$47.05	
Total Per Pay Period Cost		\$272.65	

You and Your Dependent Information

You are responsible for adding and/or updating any incorrect or incomplete dependent information.

No.	Name	Relationship	Birth Date	Gender	Disabled	Medical	Dental	Vision
0	KIRK REUTTER	EE		M		Y	Y	

Relationship codes are:

EE = Employee, SP = Spouse, SS = Same Gender Spouse, CH = Child, O = Other (any other eligible legal dependents)

Please log on to www.omnicare.essbenefits.com to make changes to your dependent information.

Beneficiary Information

Important: The following are your beneficiaries on record.

No.	Name	Relationship*	Basic Life & AD&D		Voluntary Life & AD&D	
			Pri/Sec**	Percent	Pri/Sec**	Percent
1	REBECCA REUTTER	BN	Pri	100%	Pri	100%

* SP = Spouse, SS = Same Gender Spouse, CH = Child, BN = Beneficiary only ** Pri = Primary, Sec = Secondary.

Please log on to www.omnicare.essbenefits.com to elect or make corrections to your beneficiary information.